

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

COASTAL UNILUBE, INC.,

Employer,

and

Case 26-RC-8094

AFRICAN AMERICAN WORKERS UNION,

Petitioner.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding¹, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.²
3. The labor organization involved claims to represent certain employees of the Employer.³

4. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All full-time and regular part-time production and maintenance employees employed at the Employer's warehouse facilities at 101 South Eighth Street, West Memphis, Arkansas, including material handlers, material handler leads, blenders, blender leads, mechanics, mechanic leads, yard truck drivers, delivery truck drivers, plant clericals, and lab technicians.

EXCLUDED: office clerical employees, guards, and supervisors, as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to issue subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained the status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently

replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by the African American Workers Union.

LIST OF VOTERS

To ensure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U. S. 759 (1969). Accordingly, it is directed that an eligibility list containing the **full** names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days of the date of this Decision. The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Memphis Regional Office (Region 26), 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **July 26, 1999**.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a Request for Review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by **August 2, 1999**.

DATED July 19, 1999, at Memphis, TN.

/s/

Gerard P. Fleischut, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, TN 38104-3627
tel: 901-544-0018

¹ The Employer filed a brief which was duly considered.

² The Employer is a Tennessee corporation engaged in the production and distribution of automotive lubricants and related products at its West Memphis, Arkansas facilities. During the past calendar year, a representative period, the Employer sold and shipped products valued in excess of \$50,000 directly to customers located outside the State of Arkansas.

³ The Employer declined to stipulate to the status of the Petitioner organization as a labor organization within the meaning of Section 2(5) of the Act. Under the statutory definition set forth in Section 2(5), the Petitioner organization is a labor organization if (1) employees participate, (2) the organization exists, in whole or part, for the purpose of dealing with employers, and (3) the dealings with employers concern statutory subjects. Electromation, Inc., 309 NLRB 990 (1992). Based upon the record herein, the Petitioner organization is a labor organization under Section 2(5) of the Act.

The Employer contends that the Petitioner organization is not a labor organization within the definition of Section 2(5) of the Act because there is no employee participation. The term "employee" is defined in Section 2(3) of the Act to include any employee and is not limited to the employees of a particular employer. The term "employee" has been interpreted to be taken in its ordinary meaning, as any person who works for another for hire. Allied Chemical and Alkali Workers of America, Local No. 1 v. Pittsburgh Plate Glass Co., Chemical Div., 404 U.S. 157, 78 L.R.R.M. 2974 (1971).

The Board has held that where an organization has officers, formed committees, held meetings where employees of the employer attended, and at least one-third of the employees had signed authorization cards enabling the organization to file a petition with the Board, the organization had established employee participation. Michigan Bell Telephone Co., 182 N.L.R.B. 632 (1970). The record shows that the Petitioner has a governing board from which officers have been elected, has formed various standing committees, had several meetings with the Employer's employees, and at least 30% of the Employer's

employee's had signed cards requesting membership in the Petitioner organization and authorizing it to represent them. In addition, the record shows that the first meeting between Petitioner and employees of the Employer occurred at the impetus of several employees and that subsequent meetings occurred in various employees' homes.

The Employer argues that the employee participation requirement has not been met because none of its employees are actually members – they have just signed applications for membership, none of its employees participated in electing the members of the Workers' Council, and none of its employees have participated in any organizing activities. The Board has held that where an organization's purpose had not yet come to fruition and it lacked any representational activity or structural formality, but the record showed that there would be employee participation if the organization were certified to represent the employees, the organization is a labor organization within the meaning of the Act. Advance Industrial Security, Inc., 225 N.L.R.B. 151 (1976). The record shows that at least 30% of the Employer's employee's have signed membership applications for the Petitioner organization, indicating that employees will participate in union organizational activities should the Petitioner be certified to represent them. Thus, in consideration of all the above factors, the record establishes that the requirement of employee participation has been met.

The record shows that the remaining requirements for labor organization status under Section 2(5), that the organization exist, in whole or part, for the purpose of dealing with employers, and that the dealings with employers concern grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of employment have been met by the Petitioner. Thus, Petitioner has met all the statutory requirements of a labor organization. However, the Employer argues that Petitioner "is not a labor organization because it does not actually exist." The Employer lists thirty-one (31) reasons why Petitioner does not exist which can be grouped into four general categories: (1) lack of internal structural organization; (2) lack of financial organization; (3) lack of recognized structure by any government entity; and (4) an ulterior purpose to act as a civil rights organization.

The Employer lists several reasons why Petitioner does not exist as an organization that are based upon a lack of internal structure. These reasons are based primarily upon an absence of rules or procedures regarding various aspects of membership and election of officers. The record shows that the Petitioner has some aspects of formal structure, including a constitution and by-laws, a governing body, committees, meetings structure and an amendment procedure in the event additional structure is required. However, Section 2(5) does not require that a labor organization have any formal structure. A group of individuals may be considered a labor organization even when it lacks basic formal structure such as a constitution, by-laws, elected officials, or formal meetings. Columbia Transit Corp., 237 N.L.R.B. 1196 (1978); Arkay Packaging, 221 N.L.R.B. 99 (1975); Yale University, 184 N.L.R.B. 860 (1970); Butler Manufacturing, 167 N.L.R.B. 308 (1967); Stewart-Warner Corp., 123 N.L.R.B. 447 (1959). Thus, although the record refutes the Employer's contention that the

Petitioner lacks internal organizational structure, the Petitioner organization has more formal structure in place than is required of a labor organization under Section 2(5).

The Employer also includes on its list several reasons why Petitioner does not exist as an organization that are based upon a lack of a financial structure. These relate to the lack of assets, property, money, or fee structure typically found in a labor organization. However, Section 2(5) does not require that an organization have any independent financial structure in place in order to constitute a labor organization. National Labor Relations Board v. Cabot Carbon Company, 360 U.S. 203, 44 L.R.R.M. 2204 (1959). See also Yale University, 184 N.L.R.B. 860 (1970) (organization relied on voluntary contributions for funds); Butler Manufacturing, 167 N.L.R.B. 308 (1967) (organization collected no dues or initiation fees). Thus, although the record supports the Employer's contention that Petitioner has no financial structure, it is not relevant to the determination of whether Petitioner is a labor organization under Section 2(5).

The Employer's list also includes several reasons why Petitioner does not exist as an organization that are based upon a lack of organizational structure stemming from external sources. These reasons relate to the failure of Petitioner to file requisite forms with the United States Department of Labor and failure to obtain registration or license as a legal entity. A petitioner's compliance or noncompliance with the Labor-Management Reporting and Disclosure Act of 1959, as amended, does not affect the status of an organization as a labor organization within the meaning of Section 2(5). Meijer Supermarkets, Inc., 142 N.L.R.B. 513, n.3 (1963). The failure to be registered or licensed as a legal entity also does not affect the status of an organization as a labor organization within the meaning of Section 2(5), since there is no requirement that an organization have any formal structure. Thus, although the record supports the Employer's contention that Petitioner has no structure recognized by other government entities, it is not relevant to the determination of whether Petitioner is a labor organization under Section 2(5).

The Employer's list also includes several reasons why Petitioner does not exist as an organization that are based upon the Petitioner organization's coexistence with other civil rights organizations. These reasons relate to the prominent involvement of Dr. Isaac Richmond, the only witness to testify, in various civil rights organizations and entities, all of which use the same street address and telephone number of the church in which Dr. Richmond is the minister. The Employer contends that Dr. Richmond intends to use the Petitioner organization to advance his personal agenda for civil rights causes and that as such, the Petitioner organization will not act with the single-minded purpose of protecting and advancing the interests of the employees who select it as their bargaining agent. McDonald's of Canoga Park California, Inc., 162 N.L.R.B. 367 (1966). However, Section 2(5) requires only that the labor organization exist "in whole or in part" for dealing with employers regarding the statutory subjects. Marina Assoc. d/b/a Harrah's Marina Hotel and Casino, 267 N.L.R.B. 1007 n. 2 (1983). The record shows no evidence that Dr. Richmond intends to use the Petitioner organization to advance his personal agenda for civil rights causes.

Thus, the Employer's assertion is speculative.

The record shows that the Petitioner organization was created in part to deal with employers regarding wages, hours, working conditions and benefits and intends to deal with all other conditions of employment in representing the Employer's employees. Thus, the fact that the Petitioner organization has additional purposes, that its President is actively involved in the leadership of various other civil rights organizations, and that the Petitioner organization acts in conjunction with the various other civil rights organizations, is irrelevant to the determination of Section 2(5) labor organization status. The record reflects that Petitioner exists "in part" to deal with employers regarding statutory subjects and thus, it meets the requirements of Section 2(5).

Finally, the Employer contends that the Petitioner discriminates based upon race and thus, may not obtain or retain certified status under the Act. The Employer produced an article in which Dr. Richmond, the Secretary for Petitioner organization, and unidentified employees of the Employer were quoted describing perceived disparity in working conditions based on race. The Employer also contends that the name of the Petitioner organization serves to segregate employees and that the goals and activities of the Petitioner organization relate to issues of racial discrimination.

Racial segregation in membership by an employee representative cannot be countenanced by a Federal Agency. Independent Metal Workers Union Local No. 1, 147 N.L.R.B. 1573 (1964). However, there is nothing in the record which indicates that the Petitioner's Worker's Council or President has acted or intends to act in a racially discriminatory manner towards any member or prospective member. Moreover, there is nothing in the record which indicates that the Petitioner organization was created, operates or intends to operate in a racially segregated or divisive manner. Thus, meeting the requirements of Section 2(5), the Petitioner may obtain certified status.

There are approximately 137 employees in the unit found appropriate herein.

CLASSIFICATION INDEX

177-3925-2000

177-3925-4000